

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-TP-477
)	
Radio Station WWAB, Inc.)	NAL/Acct.No. 200332700011
Licensee of Radio Station WWAB(AM) in)	FRN 0003-7768-04
Lakeland, Florida)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 9, 2002

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Radio Station WWAB, Inc., licensee of AM radio station WWAB, Lakeland, Florida, apparently liable for a forfeiture in the amount of two thousand dollars (\$2,000) for repeated and willful violation of Sections 11.61(a)(1) and 11.61(a)(2)(i)(A) of the Commission’s Rules (“Rules”).¹ Specifically, we find Radio Station WWAB, Inc. apparently liable for failing to conduct weekly and monthly tests of the Emergency Alert System (“EAS”).

II. BACKGROUND

2. On September 10, 2002, agents from the FCC Enforcement Bureau’s Tampa Field Office inspected station WWAB (AM) in Lakeland, Florida. The broadcast station log contained no entries reflecting any EAS events or reasons for failure to send and receive required tests between March and July, 2002. A station employee stated that the station had not run any EAS tests.

III. DISCUSSION

3. Section 11.61(a)(2)(i)(A) of the Rules requires that effective January 1, 1997, AM, FM, and TV stations must conduct tests of the EAS header and End of Message codes at least once a week at random days and times. Radio Station WWAB, Inc. failed to conduct required weekly EAS tests between March and July, 2002.

4. Section 11.61(a)(1) of the rules requires that effective January 1, 1997, AM, FM, and TV stations must conduct tests of the EAS header codes, Attention Signal, Test Script and EOM code. Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. These monthly tests must be transmitted within 15 minutes of receipt by broadcast stations. Radio Station WWAB, Inc. failed to conduct required monthly EAS tests between March and July, 2002.

¹ 47 C.F.R. §§ 11.61(a)(1) and 11.61(a)(2)(i)(A).

5. Based on the evidence before us, we find that Radio Station WWAB, Inc. repeatedly² and willfully³ violated Sections 11.61(a)(2)(i)(A) and 11.61(a)(1) of the Rules by failing to conduct weekly and monthly EAS tests.

6. Section 1.80(b)(4) of the Rules⁴ sets forth the base forfeiture amounts for various violations of the Commission's Rules. The Rules do not establish a base forfeiture amount for violating the Commission's rules requiring EAS tests. Therefore, we must determine an appropriate forfeiture amount for this violation.⁵ The requirement that broadcast stations conduct EAS tests is similar in both nature and severity to other required operational performance checks identified in the Rules as required measurements or required monitoring. Section 1.80(b)(4) of the Rules sets the base forfeiture amount at \$2,000 for failure to make required measurements or conduct required monitoring. Therefore, we will assess the base forfeiture for failing to conduct EAS tests in the amount of \$2,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require."⁶ Considering the entire record and applying the factors listed above, this case warrants a \$2,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Radio Station WWAB, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of two thousand dollars (\$2,000) for repeated and willful violation of Sections 11.61(a)(2)(i)(A) and 11.61(a)(1) of the Rules by failing to conduct weekly and monthly tests of the Emergency Alert System.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Radio Station WWAB, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed

² The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act. *Id.*

⁶ 47 U.S.C. § 503 (b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Radio Station WWAB, Inc., P. O. Box 65, Lakeland, Florida 33802.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
District Director, Tampa Office

Enforcement Bureau

⁹ See 47 C.F.R. § 1.1914.

Attachment